IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 278 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SISRAM CHANDRARAM CHAUDHARY
(POWER OF ATTORNEY HOLDER OF ROHILKUMAR)

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Revision Application No. 278 of 2001
MR PRAVIN GONDALIYA for Petitioner No. 1
MR HH PATEL, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/07/2001

ORAL JUDGEMENT

#. In this revision, the order of Additional Sessions Judge, Nadiad passed on 16-5-2001 is under challenge.

#. The brief facts giving rise to this revision are as under :

A truck loaded with 350 bales of raskat Gur (rotten Jaggery) was being transported from District Muzaffarnagar in Uttar Pradesh. The truck on its way to Nasik passed through Gujarat. It was intercepted. Papers were required from the driver and the conductor. It was found that the Jaggery was not fit for human consumption, rather it could be used for distillery purposes. Consequently, an offence was found to have been committed within the State of Gujarat. The case-property, namely, 350 bales of rotten Jaggery were seized.

#. The Attorney of the owner of the Jaggery moved an application for release of case-property. Admittedly, there was no dispute regarding ownership in the consignment of Jaggery. The Judicial Magistrate, Mehamdabad allowed the application through order dated 3-5-2001 with six conditions, directing that the Jaggery be delivered to the applicant on his furnishing a bond of Rs.2 lacs and solvency certificate of the like amount subject to the condition nos.1 to 6 mentioned in the order.

#. This order was challenged in revision before the lower revisional Court. The lower revisional Court was of the view that the order of the Judicial Magistrate was illegal, hence, the revision was allowed and the order of the learned Magistrate was set aside. It is, therefore, this revision.

#. Shri Pravin Gondaliya, learned counsel for the revisionist and Shri HH Patel, learned APP have been heard.

#. The first objection of Shri Patel has been that the powers of the High Court in revision are very much limited and restricted, and since the order of the Additional Sessions Judge, Nadiad is in accordance with law, hence, there is no ground for interference. I am unable to accept the contention that the revisional powers of the High Court are limited and it has to put seal upon the orders passed by the Additional Sessions Judge. Interference by the High Court is certainly justified when it finds that the order passed by the Additional Sessions Judge is contrary to law and illegal.

#. After hearing both the sides, I find that the order of the Additional Sessions Judge is not in accordance

with law, rather it is contrary to law and also to two unreported decisions of this Court in Criminal Revision No.502/98 decided on 3-9-1998 and Criminal Revision No.2875/95 decided on 11-12-1995.

#. The facts in Criminal Revision No.2875/95 decided on 11-12-1995 were almost identical. Here also, rotten Gur was being transported and it was intercepted. The question was, whether it should be handed over in the custody of the owner or not. It was held that the case-property be handed over by the concerned Magistrate to the petitioner, owner, on certain terms and conditions imposed in the said order. It is, thus, manifest that the impugned order is not in accordance with the view taken by this Court in Criminal Revision Application No.2875/95.

#. It further appears from the impugned order that the learned Additional Sessions Judge was of the view that the rotten Jaggery was being transported in Gujarat for illegal purposes, namely, for distillery purpose, and as such, release of such case-property in favour of the owner will also be illegal. However, this observation seems to be inaccurate and incorrect. Shri Gondaliya has shown a letter from Balbir Singh & Sons of Miranpur, District Muzaffarnagar. It is addressed to Motilal Dadamchand Pahad & Sons of Malegaon, District Nasik. The goods receipt has also been shown by Shri Gondaliya, in which, recipient's name is M/s.Balbir Singh & Sons of District Muzaffarnagar. The name of the consignee is M/s.Motilal Dadamchand Pahad & Sons of Malegaon, District Nasik. It is, thus, difficult to accept the observation of the Additional Sessions Judge that the rotten Gur was being transported for Gujarat and it was intercepted at Mehamdabad. Consequently, this should not have weighed with the Additional Sessions Judge in reversing the order of the trial Magistrate.

##. Shri Patel has referred to the observation of the Additional Sessions Judge that the report of the FSL also supports the prosecution. However, at this stage, it was not to be decided, whether any prima facie offence has been committed or not and whether any violation of rules framed has been made by the owner or by the consignee or not. All that was required to be seen was, whether the case-property should be handed over in the custody of the real owner. For this, the learned Judicial Magistrate has imposed certain conditions and those conditions do not seem to be unreasonable or beneficial only for the owner and against the interest of the prosecution. One of the conditions in the order of the Judicial Magistrate

is that the accused shall hand-over necessary sample representing the aforesaid muddamal to the Investigating Officer. Consequently, chemical analysis of sample of seized Gur could safely be done, and it is not necessary that all the 350 bales of Gur be produced on each and every date when the trial proceeds.

##. The Additional Sessions Judge also lost sight of the fact that raskat Gur is a perishable commodity and if it is kept at the police station, nothing will remain and the entire commodity will be perished, causing financial loss to the owner. The State, in these circumstances, will not get any benefit by keeping the case-property at the police station or at any other convenient place.

##. Shri Patel has also referred to the observation of the Additional Sessions Judge that in the report of the FSL, it is mentioned that the sample of Gur, which was sent for analysis was found to be rotten and less than the standard given for edible Gur in the Prevention of Food Adulteration Act. From this report only, this inference can be drawn that the Gur was not fit for human consumption. It is not the case of the revisionist that the Gur was being carried for sale in open market for human consumption. Distillery may be prohibited in the State of Gujarat, but not in Nasik. Consequently, simply on this apprehension that the seized Gur may be used for distillery purposes in Gujarat it could be no ground for disturbing the order of the learned Magistrate.

##. In my view, the order of the Additional Sessions Judge, for the aforesaid reasons, is contrary to law and can not be sustained. The revision, therefore, succeeds and is hereby allowed. The impugned order of the Additional Sessions Judge, Nadiad is hereby quashed and set aside.

July 26, 2001. [D.C. Srivastava, J.]

/sakkaf